

Department of Justice

§ 36.406

(2)(i) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

(ii) Only alterations undertaken after January 26, 1992, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations.

[Order No. 1513-91, 56 FR 35592, July 26, 1991, as amended by AG Order No. 3181-2010, 75 FR 56256, Sept. 15, 2010]

§ 36.404 Alterations: Elevator exemption.

(a) This section does not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story, except with respect to any facility that houses a shopping center, a shopping mall, the professional office of a health care provider, a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal.

(1) For the purposes of this section, *professional office of a health care provider* means a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility that houses a *professional office of a health care provider* only includes floor levels housing by at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(2) For the purposes of this section, *shopping center or shopping mall* means—

(i) A building housing five or more sales or rental establishments; or

(ii) A series of buildings on a common site, connected by a common pedestrian access route above or below the

ground floor, that is either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of *place of public accommodation* in § 36.104 are considered sales or rental establishments. The facility housing a *shopping center or shopping mall* only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

(b) The exemption provided in paragraph (a) of this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in this subpart. For example, alterations to floors above or below the accessible ground floor must be accessible regardless of whether the altered facility has an elevator.

§ 36.405 Alterations: Historic preservation.

(a) Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, or are designated as historic under State or local law, shall comply to the maximum extent feasible with this part.

(b) If it is determined that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or the facility, alternative methods of access shall be provided pursuant to the requirements of subpart C of this part.

[AG Order No. 3181-2010, 75 FR 56256, Sept. 15, 2010]

§ 36.406 Standards for new construction and alterations.

(a) *Accessibility standards and compliance date.* (1) New construction and alterations subject to §§ 36.401 or 36.402 shall comply with the 1991 Standards if the date when the last application for a building permit or permit extension is certified to be complete by a State,